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April 17, 2017

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication
Review of Local Radio Ownership Rules - Embedded Radio Markets
MB Docket Nos. 09-182 and 14-50**

Dear Ms. Dortch:

The Commission has before it a petition for reconsideration filed in the above-captioned proceedings on December 1, 2016 by Connoisseur Media, LLC (“Connoisseur”) regarding the Commission’s local radio ownership rules and their treatment of embedded markets. Connoisseur argued that the Commission’s treatment of embedded markets in its *Second Report and Order* in the above-referenced proceeding was arbitrary and capricious, and, as a practical matter, unworkable. On March 10, 2017, the National Association of Broadcasters (“NAB”) submitted an *ex parte* communication supporting Connoisseur’s petition and offering a suggestion as to how Connoisseur’s proposal could better be implemented.¹ As discussed below, Connoisseur supports NAB’s proposal.

In its petition, Connoisseur objected to the Commission’s determination that it would not change its policy of evaluating, in any analysis of radio ownership in an “embedded market,” not only the ownership of the licensee in the particular embedded market in which the licensee owns stations, but also in the greater “parent” broadcast market. This dual analysis of ownership compliance in both the embedded and parent markets occurs even if the license owns no station in the core of the parent market, and its stations in other embedded markets do not in reality compete with each other and do not in reality compete with the stations located in the core of the parent

¹ See Letter from National Association of Broadcasters, MB Docket Nos. 14-50, 09-182 (March 10, 2017) (“*NAB Ex Parte*”).

market. While the Commission noted that it might allow waiver of the rules in the appropriate circumstance, it provided no indication of when such a waiver would be appropriate or what standards would be used to evaluate such a waiver.

Connoisseur urged the Commission to adopt a specific policy permitting owners with stations that are home to one embedded market to acquire stations in other embedded markets in the same parent market, as long as ownership of the stations in question comply with the ownership rules in the embedded market to which they are home (using the Nielsen data for that market), and as long as those stations did not in reality compete in the same manner as stations located in the home counties of the parent market. Connoisseur suggested that the second factor, making sure that the stations in different embedded markets did not compete with each other in a way that could allow them to accumulate an unduly concentrated position in the parent market, could be met by using the “contour overlap methodology” of determining compliance with the radio ownership rules.² This was the same methodology that the Commission adopted, in the *Second Report and Order*, when it FCC recognized that, in Puerto Rico, Nielsen radio market definitions did not accurately define where true competition that needed be protected by the ownership rules occurred in that market. Connoisseur submitted that blind reliance on Nielsen in the embedded market context similarly ended up prohibiting combinations that really were not anticompetitive.

In its letter, NAB expressed support for the Connoisseur proposal, but suggested that, rather than use the contour methodology, another methodology might be simpler and more directly applied in determining which stations really had a competitive impact in the parent market. Specifically, it suggested that stations licensed in an embedded market with signal coverage of less than 50 percent of the parent market’s population should not be considered part of the parent market for the purposes of the local ownership limits.³ In its filings in this proceeding, Connoisseur demonstrated that the majority of stations licensed to communities in embedded markets cover less than 25 percent of the population of the parent market with a 1 mv/m signal, and only a handful cover more than 50%. In contrast, all of the FMs home to the counties in the core of the parent market covered over two-thirds of the population in the parent market (including the communities in the embedded markets).⁴ Quite simply, the embedded

² Connoisseur notes that embedded market stations having undue concentration in the parent market is not likely to be an issue as, even if one company were to own every single station geographically home to an embedded market in the New York City parent market, that owner would have only a 13.6% audience share, about half the market share of the two largest owners of stations in the parent market, each of whom has a 22% market share. Such a concentration would be impossible for various reasons including that the ownership would far exceed the audience caps in each of the embedded markets. See Letter from David Oxenford on behalf of Connoisseur Media, LLC, MB Docket Nos. 14-50, 09-182, at 2-3 (June 7, 2016).

³ NAB *Ex Parte* at 2.

⁴ See Letter from David Oxenford on behalf of Connoisseur Media, LLC, MB Docket Nos. 14-50, 09-182, at 2-3 (June 7, 2016).

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market stations do not meaningfully compete in the parent market because they just don't reach enough of the people in that parent market.

Most importantly, the NAB proposal (like that advanced by Connoisseur) helps provide marketplace certainty. The motivation behind Connoisseur's reconsideration petition is that certainty is needed to allow owners of embedded market stations to make deals that will allow them to acquire stations in other embedded markets and make them better able to compete in the markets in which they operate. As Connoisseur has stated in its earlier pleadings, a change in policy cannot be left to a case-by-case evaluation, as no deals could ever get done if a potential buyer cannot assure a seller that there is a significant likelihood that the deal will be completed in a timely fashion.

It is time to update the Commission's ownership rules to reflect today's marketplace realities, and to provide much needed regulatory relief to broadcasters operating in embedded markets. Revising the rules in this manner will unleash economic growth and drive competition. As such, Connoisseur strongly urges the Commission to adopt Connoisseur's proposal, with the modifications proposed by NAB.⁵

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,



David Oxenford
Counsel to Connoisseur Media, LLC

⁵ Connoisseur still believes that its initial proposal would equally secure the same ends of preserving competition while prohibiting only those combinations that really would endanger that competition, and would have no objection to the adoption of the proposal if the FCC found it better served the public interest. However, the NAB proposal is perhaps even simpler to apply, and thus Connoisseur is willing to support that proposal.